

APPEAL NO. 93241

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on March 4, 1993, Charles T. Cole presiding as hearing officer. He determined that the respondent (claimant) sustained a compensable cerebral vascular injury in addition to other compensable internal injuries on (date of injury), and that the appellant (carrier) did not properly contest compensability of the claimant's head injuries. Carrier urges that it timely filed its controversion of the claim and then states that the injury at issue "is the cerebral vascular injury, to be differentiated from the original claim of injury by the claimant" and that it "did not dispute the original 'light stroke' injury." Alternatively, the carrier urges there is new evidence (a report dated August 19, 1992 from a doctor they apparently sent medical records to) which should allow it to reopen the issue of compensability and that such evidence makes it clear that the cerebral vascular condition is unrelated to the claimed injury. Claimant argues that there is sufficient evidence to support the determinations of the hearing officer and requests that the decision be affirmed.

DECISION

Determining there is sufficient evidence of record to support the hearing officer's findings and conclusions, his decision is affirmed.

The issues before the hearing officer at this contested case hearing were: (1) whether the carrier properly contested compensability of claimant's head injury; and, (2) whether claimant sustained a cerebral vascular injury in addition to other compensable internal injuries on (date of injury). The claimant testified that he was employed as a pen rider and that he was on a horse moving cattle on (date of injury) when his horse was hit by a gate resulting in the claimant being hung up by his coveralls and having his foot caught, with his feet going into the air and his head hitting a pipe or post. He stated he hit the left side of his body and head, that he was in pain all over and that he vomited blood. A supervisor was aware of the incident. Although he was in pain, bruised, dizzy and passing blood, he did not go to a doctor because someone had told him he would probably get fired. He continued working until March 21, 1992, when he became dizzy, numb on his left side and ended up passing out. He was taken to an emergency room and subsequently taken by helicopter to a medical center. He was ultimately determined to have internal injuries and to have suffered a stroke although initially, according to medical records, there was a question as to whether he had suffered a cardiovascular problem since when he was initially seen in the hospital he had chest pains. In any event, apparently two files were opened, one for the February 17th accident and one for the March 21st incident. The Employer's First Report of Injury or Illness form (Texas Workers' Compensation Form 1 (TWCC-1)) was filed on "3-23-92" and references the earlier accident of February 17th, and indicated the injury as sharp pain on the left side.

The carrier filed two different notices of refused or disputed claim (Payment of Compensation or Notice of Refused/Disputed Claim, TWCC-21), one dated "04-10-92" and

the other dated "7-23-92." The earlier notice stated the nature of the injury as "stroke" and provided the following reason:

At this time the carrier has been unable to reach the claimant or the doctor to determine if the claimant's stroke is in line with Section 4.15 compensability of Heart Attacks; and, the second notice stated the nature of the injury as "stroke" and provided the following reason:

The medical records received (sic), indicate that the claimant had a pre-existing heart (sic) condition. As stated in the board rule this would not (sic) be compensable (sic) as the natural progression of a pre-existing heart condition is evident. Based on these medical records, the carrier respectfully denies this claim.

Regarding the medical evidence offered, the claimant's treating doctor stated his belief that the cerebral vascular incident experienced by the claimant was related to his injury in February "when he struck his head forcefully against a fence post made of pipe." A CT scan of the claimant's head while in the hospital "showed evidence for lacunar infarct." A report from a carrier's doctor dated August 19, 1992, states that the doctor has reviewed medical records on the claimant and opines that none of the diagnoses of the claimant's treating doctor are "in any way related to this patient's original injury."

With the evidence in this posture, the hearing officer determined that the claimant sustained a compensable cerebral vascular injury in addition to other compensable internal injuries on (date of injury). Without doubt, there was conflicting evidence on the issue. However, the resolution of conflicts in the evidence is the responsibility of the hearing officer as the fact finder in a contested case hearing. Article 8308-6.34(e) and (g); Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. See also Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Given the testimony of the claimant, which could be believed by the hearing officer (Highlands Insurance Co. v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ)), together with the opinion of his doctor that he suffered a cerebral vascular incident related to his original accident and the medical records showing the results of objective tests, there is a sufficient evidentiary basis for the hearing officer's finding and conclusion on this issue.

Regarding the issue of a failure of proper notice of controversion of the claim as it related to a cerebral vascular injury, although essentially mooted out by the hearing officer's sustained decision on the compensability of that injury, we are somewhat at a loss as to the carrier's continued disputing of the injury on the basis of the heart attack provisions of the 1989 Act (Article 8308-4.15), particularly since the notice states the nature of the injury as "stroke." In Texas Workers' Compensation Commission Appeal No. 91064, decided December 12, 1991, we determined that the causal and other requirements found in Article 8308-4.15 which specifically pertain to heart attacks, do not apply to strokes. As we view the record in this case, there was some confusion, at least in the earlier medical records, as

to whether a cardiovascular problem was involved in claimant's symptoms and problems concerning the incident at work on March 21, 1992. However, even later and once it became apparent that a cerebral vascular injury was in issue, there was no controversion, apparent from the record, of that injury by the carrier. We do not believe, as a general proposition, that an Article 8308-4.15 basis for denying or disputing a cerebral vascular injury is sufficient to properly controvert such a claim and does not satisfy the requirements of Article 8308-5.21 or Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (TWCC Rule 124.6). See Texas Workers' Compensation Commission Appeal No. 92218, decided July 18, 1992; Texas Workers' Compensation Commission Appeal No. 92330, decided August 31, 1992. See *generally* Texas Workers' Compensation Commission Appeal No. 91035, decided November 7, 1991; Texas Workers' Compensation Commission Appeal No. 92313, decided August 28, 1992. We also have indicated that where a claimant is asserting a lack of timely controversion by a carrier, there must be some evidence that the carrier is on notice of the injury that it must contest within 60 days. See Texas Workers' Compensation Commission Appeal No. 92437, decided September 28, 1992. Under the circumstances presented in this case, there was a sufficient basis for the hearing officer to find and conclude that proper notice of contesting of the claim of cerebral vascular injury was not made by the carrier. There is sufficient evidence to show the carrier was on notice of the cerebral vascular injury.

For the foregoing reasons, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge